Criminal Appeal NO.102-DBA OF 1994

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal NO.102-DBA OF 1994

Date of Decision: 07-08-2006

The State of Punjab

.....Appellant

Versus

1.Mohinder Singh son of Kartar Singh son of Chandi Singh, Paledar,

2.Jit Singh Nahang son of Kartar Singh son of Chandi Singh, Paledar,
3.Jit Singh son of Inder Singh son of Bainka Singh, Paledar

All resident of village Dhab Karyal Basti Baroli Wali, Police Station Jallalabad, District Ferozepur

4.Bachan Singh son of Mehtab Singh son of Har Singh, Paledar,resident of Village Chak Mahnewala, Police Station City Jallalabad District Ferozepur
5.Pritam Singh son of Inder Singh son of Bainka Singh, Paledar resident of Village Dhab Karyal Basti Baroliwali, Police Station, City Jallalabad, District Ferozepur
6.Anokh Singh son of Tikka Singh son of Shankar Singh, Paledar resident of Village Katianwala, Police Station Jallalabad, District Ferozepur

.....Respondents

and

Criminal Appeal No.147-SB of 1993

Jit Singh Nahang son of Kartar Singh son of Chandi Singh resident of Village Dhab Karyal Basti Baroli Wali, Police Station Jallalabad, District Ferozepur

....Appellant

Versus

The State of Punjab

....Respondent

Criminal Appeal NO.102-DBA OF 1994

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.AS Virk, Additional Advocate General, Punjab.

Mr.Sanjeev Manrai,Advocate
for the respondents.

R S MADAN, J.

This order of our would dispose of the Criminal Appeal No.102-DBA of 1994, titled as Mohinder Singh and five others Vs. The State of Punjab under Sections 364/452/324/323/148/149 of the Indian Penal Code as well as the Criminal Appeal No.147-SB of 1993, titled as Jit Singh son of Kartar Singh Vs. The State of Punjab, which have arisen out of the common judgment rendered by Mr.LR Roojam, Additional Sessions Judge, Ferozepur on 04-5-1993.

The learned Additional Sessions Judge acquitted accused Nos.1,3,4,5 and 6 under Sections 364/452/324/323/148/149 of the Indian Penal Code and convicted the accused No.2 Jit Singh son of Kartar Singh resident of Village Dhab Karyal Basti Baroliwali, Ferozepur under Section 324 of the Indian Penal Code and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

The State of Punjab has filed an appeal against acquittal of accused Mohinder Singh son of Kartar Singh, Jit Singh son of Inder Singh, Bachan Singh son of Mehtab Singh, Pritam Singh son of Inder Singh and Anokh Singh son of Tikka Singh.

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In brief the facts of the case are that Jagan Nath son of Machhi Ram resident of Jallalabad suffered a statement Ex.PF before S.I. Paras Ram wherein he stated that on 9-6-1990 at about 10.30 a.m., he was sitting at the Karyana shop of his brother Surinder Kumar situated in Bahmani Bazar, Jallalabad. At that time, Mohinder Singh accused, President of Palledar Union of FCI, Jallalabad and his brother Jit Singh Nahang came to the shop of Surinder Kumar and demanded a bag of sugar on credit, which was refused by Surinder Kumar. Upon which, both the accused exhibited a threat to Surinder Kumar that they would see him for not supplying the sugar on credit to them. After sometime, Jit Singh son of Kartar Singh armed with kapa (datar), Jit Singh son of Inder Singh armed with dang, Pritam Singh son of Inder Singh armed with sota, Anokh Singh son of Tikka Singh armed with iron rod and Bachan Singh son of Mehtab Singh armed with dang alongwith 4-5 persons came to the shop of Surinder Kumar. On reaching the shop, they asked Surinder Singh that they would teach him a lesson for not supplying sugar on credit. Accused Jit Singh gave a kapa blow which hit on the right side of the head of Surinder Kumar, Mohinder Singh gave a soti blow which hit on the left side of the head of Surinder Kumar. On hearing raula, Jagdish Kumar son of Mohan Lal brother of Surinder Kumar and Ashwani Kumar and Rakesh Kumar sons of Babu Ram came there and when they were trying to save the accused from the clutches of accused, Jit Singh and Pritam Singh inflicted injuries on their persons with their respective weapons. In the meanwhile, Surinder Kumar and Jagan Nath also raised hue and cry, which attracted Darshan Lal son of Mangat Ram Arora and Bhagwan Dass son of Mohan Lal, who witnessed

the occurrence and all the accused took Jagdish Kumar with them while inflicting injuries on his person.

S.I. Paras Ram went to the place of occurrence and prepared the rough site plan Ex.PG. ASI Naib Chand recorded the statements of Jagdish Kumar, Surinder Kumar, Ashwani Kumar, Bhagwan Dass and Darshan Lal.

All the injured were examined by Dr.Sushil Gupta, who conducted the medico legal examination of Ashwani Kumar son of Machhi Ram and found 4 injuries on his person. Injury No.1 was kept under observation whereas injuries No.2 to 4 were declared as simple. He also examined Rakesh Kumar son of Babu Ram and found one injury on his person, which was owned to be caused by blunt weapon. He also examined Jagdish Chand son of Mohan Lal and noticed 3 injuries on his person. They were found simple in nature. He further examined Surinder Kumar son of Machhi Ram and noticed 2 injuries on his person. Injury No.1 was declared simple and injury No.2 was kept for X-ray.

After the investigation of the case was completed, challan against the accused was presented in the Court of Illaqa Magistrate, Mr.OP Garg, Additional Chief Judicial Magistrate, Ferozepur.

On appearance of the accused on 26-5-1992, all the accused before the learned Additional Sessions Judge, Ferozepur were charged under Sections 148/452 read with Sections 149 and 323 read with Section 149 of the Indian Penal Code and Section 364 of the Indian Penal Code read with Section 149 of the Indian Penal Code. Ajit Singh @ Jit Singh and Mohinder Singh both sons of Kartar Singh were charged for an offence under Section 324 of the Indian Penal Code for having caused

simple hurt with sharp edged weapon on the person of Surinder Kumar while the remaining accused were charged under Section 324 read with Section 149 of the Indian Penal Code. The aforesaid charges were read over and explained to the accused in simple Punjabi, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution relied upon the testimony of PW1-Dr.Sushil Gupta, PW2-Jagan Nath, PW3-Jagdish Kumar, PW4-Surinder Kumar, PW5-Paras Ram, Investigating Officer and PW6-ASI Nasib Chand.

After the evidence of the prosecution was closed, the accused were examined under Section 313 of the Code of Criminal Procedure in which the entire prosecution version was put to them, to which they pleaded innocence and stated that they did not cause any injury to any injured person. However, the accused did not lead any evidence in defence.

After considering the evidence brought on record, the learned Additional Sessions Judge, Ferozepur acquitted accused Mohinder Singh, Jit Singh son of Inder Singh, Bachan Singh, Pritam Singh and Anokh Singh but convicted Jit Singh son of Kartar Singh son of Chandi Singh under Section 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

Aggrieved by the impugned order of acquittal and conviction, the State has filed an appeal against acquittal of the aforesaid accused whereas accused Jit Singh son of Kartar Singh son of Chandi Singh has filed an appeal against order of conviction and sentence passed against

him.

We have heard the learned counsel for the parties and carefully gone through the record.

The learned State counsel has stated that all the injured, namely, Ashwani Kumar, Rakesh Kumar, Jagdish Chand and Surinder Kumar have supported the case of the prosecution. Therefore, the learned Additional Sessions Judge, Ferozepur has erred in acquitting the accused in the instant case.

We are not convinced with the arguments of the learned State counsel because on the date of occurrence, the Investigating Officer, Mr.Paras Ram, S.I., recorded the statement of Jagdish Kumar Ex.DA, Ashwani Kumar Ex.DB, Rakesh Kumar, Ex.DC and Surinder Kumar Ex.DD under Section 161 of the Code of Criminal Procedure in which they categorically stated that accused persons have not caused them injury with their respective weapons as alleged by the prosecution. None of the PWs have stated that the accused trespassed into the shop of Surinder Kumar. Therefore, no offence under Section 452 of the Indian Penal Code was made out.

The offence under Section 364 of the Indian Penal Code was not made out against the accused because the prosecution witness had failed to prove as to with what weapon and on which part of the body of Surinder Kumar, the injuries were caused. The prosecution has further failed to prove that the accused kidnapped Jagdish Kumar and with an intention that he might be murdered or that he might be so disposed of as to be put in danger of being murdered. PW3-Jagdish Kumar made a very formal statement that after causing injuries on his person, the accused took

him to their office and on the way the accused also gave him beating and he was rescued by the Police from the office of the accused. Therefore, offence under Section 364 was not proved by the prosecution.

In the light of the aforesaid discussion, the learned Additional Sessions Judge, Ferozepur recorded the order of acquittal.

We have gone through the reasoning adopted by the learned Additional Sessions Judge, Ferozepur with respect to the offence for which the accused were charged and found that order of acquittal passed in favour of accused Mohinder Singh, Jit Singh son of Inder Singh, Bachan Singh, Pritam Singh and Anokh Singh does not suffer from any infirmity. Resultantly, the leave to appeal against acquittal is declined.

The order of conviction recorded against appellant Jit Singh son of Kartar Singh son of Chandi Singh resident of Village Dhab Karyal Basti Baroli Wali, Police Station Jallalabad, District Ferozepur has not been challenged before us except with respect to the modification in the order of sentence into probation.

Accordingly, the order of conviction recorded by the trial Court against Jit Singh son of Kartar Singh-accused-appellant is hereby affirmed under Section 324 of the Indian Penal Code. Thus, keeping in view the facts and circumstances that the appeal relates to the year 1993 and a period of 13 years have passed and it would be in the fitness of the things that the ends of justice would be met if the order of sentence passed by the trial Court is modified into probation. The conviction of the accused-petitioner is maintained under Section 324 of the Indian Penal Code but he is given the benefit of Section 4 of the Probation of Offenders Act. Therefore, instead of sentencing him, it is directed that he be released on

furnishing personal bonds of Rs.5,000/- with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate, Ferozeur for a period of six months, to appear and receive sentence as and when called upon for keeping good behaviour. He shall submit his bail bonds within a period of two months from today, failing which the order of sentence passed by the Additional Sessions Judge, Ferozepur shall remain in vogue.

Accordingly, the appeal No.147-SB of 1993 is dismissed on the terms indicated above.

(K S GAREWAL)
JUDGE

(R S MADAN)
JUDGE

August 07, 2006
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